

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**PREVENTION AND
COMBATING OF TORTURE OF
PERSONS BILL**

[B 21—2012]

*(As agreed to by the Portfolio Committee on Justice and
Constitutional Development
(National Assembly))*

[B 21A—2012]

ISBN 978-1-4850-0029-7

No. of copies printed 800

AMENDMENTS AGREED TO

PREVENTION AND COMBATING OF TORTURE OF PERSONS BILL [B 21—2012]

PREAMBLE

1. On page 2, in the sixth line, to omit “persons and other cruel, inhuman or degrading treatment or punishment of”.
2. On page 2, in the fourteenth line, to omit “Against” and to substitute “against”.

ARRANGEMENT OF SECTIONS

1. On page 3, after line 11, to insert: “8. Expulsion, return or extradition”.
2. On page 3, after line 12, to insert: “10. Regulations”.

CLAUSE 1

1. On page 3, from line 21, to omit the definition of “complainant”.
2. On page 3, from line 29, to omit the definition of “public official” and to substitute:

“public official” means any person holding public office and exercising or purporting to exercise a public power or a public function in terms of any legislation;

3. On page 3, in line 35, after “section 3” to insert “; and”.
4. On page 3, after line 35, to insert:

“victim” means any person who has or has allegedly been subjected to an act of torture.

CLAUSE 2

1. On page 3, from line 44, to omit “or other cruel or inhuman treatment or punishment”.

CLAUSE 3

1. On page 4, in line 2, to omit “or omission”.
2. On page 4, from line 3, to omit “, by a public official or any person acting on behalf of a public official,”.
3. On page 4, in line 5, to omit “in order” and to substitute “for such purposes as”.
4. On page 4, in line 6, to omit “a third” and to substitute “any other”.
5. On page 4, in line 7, to omit “a third” and to substitute “any other”.

6. On page 4, in line 9, to omit “a third” and to substitute “any other”.
7. On page 4, in line 12, to omit “but” and to substitute:

when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, but
8. On page 4, in line 12, after “arising” to insert “only”.

CLAUSE 4

1. On page 4, in line 15, to omit “public official” and to substitute “person”.
2. On page 4, in line 23, to omit “liable on conviction” and to substitute “on conviction liable”.
3. On page 4, in line 33, to omit “A state” and to substitute:

No exceptional circumstances whatsoever, including but not limited to, a state
4. On page 4, in line 33, after “political instability” to insert “, national security”.
5. On page 4, in line 33, to omit “other public” and to substitute “state of”.
6. On page 4, in line 34, to omit “not”.

CLAUSE 5

1. On page 4, from line 37, to omit all the words following “5.” up to and including “factors” in line 38 and to substitute:

Any court that imposes a sentence in respect of any offence under this Act must, when considering the presence of aggravating circumstances and without excluding other relevant factors, take the following factors into account
2. On page 4, in line 39, to omit “Racial” and to substitute “Any”.
3. On page 4, in line 39, to omit “complainant” and to substitute “victim”.
4. On page 4, in line 40, to omit “complainant’s mental” and to substitute “victim’s mental or physical”.
5. On page 4, in line 41, to omit “complainant had any” and to substitute “victim had any mental or”.
6. On page 4, in line 42, to omit “complainant” and to substitute “victim”.
7. On page 4, in line 43, to omit “complainant was raped or indecently assaulted” and to substitute:

victim was also the victim of a sexual act as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)
8. On page 4, in line 44, to omit “harm the complainant” and to substitute “harm, threaten or intimidate the victim”.

9. On page 4, in line 45, after “serious” to insert “mental or”.
10. On page 4, in line 45, to omit “complainant” and to substitute “victim”.
11. On page 4, in line 46, to omit “complainant” and to substitute “victim”.
12. On page 4, in line 49, to omit “complainant” and to substitute “victim”.

CLAUSE 6

1. On page 5, in line 2, to omit “person to be charged” and to substitute “accused person”.
2. On page 5, in line 5, to omit “lawfully”.
3. On page 5, in line 12, to omit “a person” and to substitute “an accused person”.

NEW CLAUSE

1. That the following be a New Clause:

Expulsion, return or extradition

8. (1) No person shall be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

(2) For the purpose of determining whether there are such grounds, all relevant considerations must be taken into account, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

CLAUSE 8

1. On page 5, in line 32, to omit “victims” and to substitute “any person who wants to lodge a complaint”.

NEW CLAUSE

1. That the following be a New Clause:

Regulations

10. (1) The Cabinet member responsible for the administration of justice may make regulations regarding any matter referred to in section 9(2), which are reasonably necessary or expedient to regulate in order to achieve the objects of this Act.

(2) Any regulation contemplated in subsection (1) must be tabled in Parliament before it is promulgated.

LONG TITLE

1. On page 2, in the second line, to omit “Against” and to substitute “against”.